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10/722,642

11/26/2003

Robert Gregory Petrancosta

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25215 7590 09/22/2008  
DOBRUSIN & THENNISCH PC  
29 W LAWRENCE ST  
SUITE 210  
PONTIAC, MI 48342

EXAMINER

HAGEMAN, MARK

ART UNIT

PAPER NUMBER

3653

MAIL DATE

DELIVERY MODE

09/22/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/722,642

**Applicant(s)**PETRANCOSTA, ROBERT  
GREGORY**Examiner**

Mark Hageman

**Art Unit**

3653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>7-24-2008</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 2-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 2-9 are listed as dependant from claims numbered 68, 71, and 73. As no claims with these numbers exist in the application it is not possible to determine from which claims these dependent claims actually depend and therefore determine the metes and bounds of the claims. As best understood by the examiner claims 2-6 and 8 depend from claim 1 while claim 7 depends from claim 6 and claim 9 depends from claim 8. The claims have been treated as having the dependencies discussed for the purpose of this office action. To overcome this rejection the applicant must amend the claims to indicate the proper dependencies.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,822,716 to Morell et al. Morell discloses an arrangement for selecting a determinable one of a plurality of placards, the arrangement comprising: an input arrangement (15) for facilitating entry of first material data corresponding to a first material; a classifications memory (14, 16, 20) for storing classification data corresponding to a plurality of hazard classifications; an exceptions memory (14, 16, 20) for storing exceptions data corresponding to a plurality of exceptions to the hazard classifications, at least one of the exceptions being selected in response to the input arrangement; a general rules memory (14, 16, 20) for storing general rules data corresponding to the plurality of placards; and a processor (11) that selects the determinable one of the plurality of placards in response to said input arrangement, said classifications memory, said exceptions memory, and said general rules memory and a segregation memory (14, 16, 20) for storing data corresponding to a predetermined minimum spatial relationship between the first and second materials.

5. The language of the claims such as "for selecting...", "for storing...", and "that selects..." is considered functional and fails to provide structural limitation to the claims. The Morell device is readily capable of performing all of the claimed functions and therefore anticipates the claims, see MPEP 2114.

6. Regarding claims 2, 3, and 5 examiner notes that the claims are directed entirely to the contents of the memory devices. These limitations are functional in that they fail to provide any structural limitations to the claim. The memory devices of Morell (14, 16,

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and 20) are readily capable of containing such data and therefore Morell anticipates the claims.

7. Regarding claims 4 and 6-8 examiner notes that these claims are completely functional as they recite the input arrangement facilitating entry of certain data, and the processor arranged to perform a calculation. The keyboard of Morell is capable of facilitating any of the claimed data entry and the processor is readily capable of performing the weight conversion and therefore Morell anticipates the claims.

### ***Response to Arguments***

8. Applicant's remarks regarding the rejection based on the "on sale bar" are persuasive and therefore this rejection has been withdrawn. Applicant's arguments regarding the Morell reference filed 7-22-2008 have been fully considered but they are not persuasive. Applicant implies that the amendment to claim one eliminates the issue of functional language. Examiner disagrees and contends that while the amendment eliminates an intended use recitation it is still functional in that it is claiming what the processor is doing. This is a function of some software therein and any standard processor (i.e. computer) could readily perform this function. The claimed limitation does not provide structural limitation to the processor as would be necessary to further limit and apparatus claim.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Hageman whose telephone number is (571) 272-3027. The examiner can normally be reached on M-F 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Mackey can be reached on (571) 272-6916. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Patrick H. Mackey/  
Supervisory Patent Examiner, Art  
Unit 3653

MCH